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THE WHITE HOUSE
WASHINGTON

August 21, 1972

MEMORANDUM FOR:

MEMBERS OF THE INTERAGENCY
CLASSIFICATION REVIEW COMMITTEE

J. FRED BUZHARDT
LAWRENCE R. HOUSTON
JOHN V. VINCIGUERRA
RALPH E. ERICKSON
JOHN R. STEVENSON

FROM:

RICHARD C. TUFARO *rw*

SUBJECT:

Regulations of Minor Departments
Implementing Executive Order 11652

This office has received copies of proposed implementing regulations of Executive Order 11652 from the following departments:

HUD)
HEW) OGC received all regulations
OMB) except OMB

If you have not received a copy of such regulation for comment and wish an opportunity to review it, please advise as soon as possible.

Memorandum

TO : L - Mr. Brower

DATE: August 30, 1972

Through: P - Mr. Blair *R*

FROM : P/HO - Richardson Dougall, Acting *RDG*

SUBJECT: Access to Classified Files for Unofficial Historical Research

The Historical Office offers the following comments on the recommendations contained in the National Archives paper entitled "Access to National Security Information and Material for Unofficial Historical Research," which is to be discussed by the Interagency Classification Review Committee on September 6.

General Comments

1. From the point of view of public affairs, it will probably be advisable not to play up the availability of classified documents for historical research, since it is unlikely that more than a small number of applications will be approved by the agencies holding the most sensitive papers, viz., State, NSC, JCS, CIA, AEC, and NSA.

2. Of these agencies, State is the only one which has an established program for declassification and publication of key documents (the series Foreign Relations of the United States). State has now declassified files through 1946 and has already published four volumes of documents for 1947. For this reason, all applications filed with State for access to classified papers will be for subjects in the period 1947-1972, whereas other agencies (e.g., Army) will probably receive many applications for the World War II period, where sensitivity is much less.

3. Treatment given to historians applying for access to classified files should be non-preferential and non-discriminatory. Papers shown to one scholar should be available to all other scholars who can gain security clearance. It might be best for agencies to rule on the acceptability of research on a given subject first, before dealing with the acceptability of the individual.

4. A considerable public-relations problem may arise if one scholar is ruled trustworthy and if another wishing to work on the same subject is ruled untrustworthy. It is for this reason that P/HO has argued that declassifying the papers and making them available to all scholars at the same time is preferable to giving access to classified papers. Favoritism is a dirty word in academic circles.

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5. Establishing the trustworthiness of a scholar (as required by E.O. 11652) may involve quite different considerations in different agencies and in dealing with different subjects. A "name check" (which shows a man is not a felon but not much more) may be quite sufficient for a project in HUD files or in 1944 Army operational files, but entirely insufficient for a project involving top secret, NODIS, NOFORN, Presidential-handling papers of the 1960's during a hot international crisis. On more recent and sensitive issues, it must be kept in mind that a considerable proportion of academic historians consider Daniel Ellsberg something of a national hero--this was clear in the enthusiastic reception he received during a recent meeting of the American Historical Association.

6. The whole question must be handled in the realization that the criteria of E.O. 11652 cannot really be met: classified information is in fact compromised the moment an unofficial historian sees it, and there is no undoing of the possible damage by circumscribing his use of the material thereafter. I recall a meeting at the National Archives some years ago when a historian stood up and rehearsed in public, from memory, the details of classified information which had been excised from his notes when they were submitted for review. Feeling that the deletions were unreasonable, he saw no reason not to reveal his frustrations in detail. There is also skepticism among academics as to whether the Government can impose legal sanctions on offenders--the court decisions in the Ellsberg case will presumably be decisive one way or another on this question.

Use of Standard Application Form

The Historical Office would much prefer not to have imposed upon it a standard application form for Government-wide use. A letter of application is a much more flexible instrument and also avoids the appearance which a form may give that the matter is a routine one sure to be approved.

If nevertheless use of a standard form is required, we suggest the following specific changes in the form proposed by the National Archives and Records Service:

1. Items 12 and 13 should be answered on separate sheets. There is no possibility that these questions can be dealt with (for State) in the space allotted on the form, and it is awkward to have the statements split between the form and continuation sheets.

2. The form itself should include the definition of "national security" given in E.O. 11652, as there is a widespread feeling in academia that it means merely defense, whereas protecting the conduct of our foreign relations is of prime importance to State, and the applicant must know that this factor

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is included in "national security" and the proper classification of documents. The applicant might well be asked to explain why he feels that access for his particular subject is "clearly consistent with the interests of national security" (to quote the Executive order).

3. In lieu of items 15, 16, and 17 on the proposed form, P/HO would prefer a question inviting the applicant to state how he intends to use the contents of the files applied for in such a way that classified information will not be published or otherwise compromised.

4. The form should make clear that not only the applicant himself, but all research assistants and typists named, will have to submit security applications if the project is approved.

5. The form should state that the applicant will not be given permission to see classified papers originated by other agencies and other governments; and it should ask to what other agencies the historian is applying in connection with the same subject. (In some cases, State may find it wiser not to act on an application until another agency has acted. If the subject cannot be researched satisfactorily, for example, without access to NSC papers, a grant of access to State files will be next to useless unless NSC also grants access, and State should perhaps wait for the NSC finding before making one of its own.)

6. The back of the form should include an undertaking not to take notes on extraneous matters or on classified other-agency or foreign-government documentation which the researcher may come across. The reason for this suggestion is that a paper-by-paper pre-screening of files given to a researcher is impractical in State without the assignment of additional personnel to P/HO or the files (an unlikely prospect), so that there is a substantial chance that a historian may see "forbidden fruit" either in the finding aids or in the papers themselves.

Standard Security Form

A/SY is of course the office to say whether the suggested form gives adequate information for a finding of trustworthiness. Depending on the recentness and sensitivity of the subject matter, I should suppose that SY might wish to conduct a full field investigation in some cases, and would then probably want the same amount of information it requires for prospective employees. If this is so, consideration should perhaps be given to whether the applicant should be required to pay, in whole or in part, the costs of the security investigation.

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A/SY should also be asked to rule on whether it will reject out of hand an application from a foreign national for a certificate of trustworthiness to see classified papers. If so, the standard application form (if one is prescribed) should make it clear that in some agencies lack of U.S. citizenship in itself will be sufficient grounds for negative action on the application.

cc: A/SY - Mr. Shea